

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HARLAN ISKE,

Case No. 3:20-cv-00424-RCJ-CLB

v.

Plaintiff,

ORDER

BELLINGER, et al.,

Defendants.

This action began with an application to proceed *in forma pauperis* and a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. (ECF Nos. 1, 1-1.). On April 29, 2021, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty days. (ECF No. 5 at 7). The thirty-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.

15 Plaintiff's application to proceed *in forma pauperis* is granted. (ECF No. 1). Based
16 on the information regarding Plaintiff's financial status, the Court finds that Plaintiff is not
17 able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. §
18 1915. Plaintiff will, however, be required to make monthly payments toward the full
19 \$350.00 filing fee when he has funds available.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal

1 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
2 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
3 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
4 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
5 local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey
7 a court order, or failure to comply with local rules, the court must consider several factors:
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
11 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
12 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously
14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
19 disposition of cases on their merits—is greatly outweighed by the factors in favor of
20 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
21 the court's order will result in dismissal satisfies the “consideration of alternatives”
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
23 F.2d at 1424. The Court's order requiring Plaintiff to file an amended complaint within
24 thirty days expressly stated: “It is further ordered that, if Plaintiff fails to file an amended
25 complaint curing the deficiencies outlined in this order, this action will be dismissed
26 without prejudice.” (ECF No. 5 at 7). Thus, Plaintiff had adequate warning that dismissal
27 would result from his noncompliance with the Court's order to file an amended complaint
28 within thirty days.

1 It is therefore ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
2 No. 1) is granted. Plaintiff shall not be required to pay an initial installment of the filing
3 fee. In the event that this action is dismissed, the full filing fee must still be paid pursuant
4 to 28 U.S.C. § 1915(b)(2).

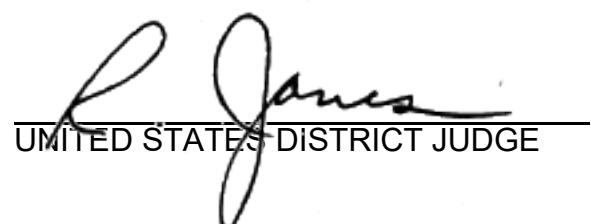
5 It is further ordered that the movant herein is permitted to maintain this action to
6 conclusion without the necessity of prepayment of any additional fees or costs or the
7 giving of security therefor. This order granting leave to proceed *in forma pauperis* shall
8 not extend to the issuance and/or service of subpoenas at government expense.

9 It is further ordered that Pursuant to 28 U.S.C. § 1915, as amended by the Prison
10 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
11 the account of **Harlan Iske, #96489** to the Clerk of the United States District Court, District
12 of Nevada, 20% of the preceding month's deposits (in months that the account exceeds
13 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court
14 will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will
15 send a copy of this order to the attention of Chief of Inmate Services for the Nevada
16 Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

17 It is further ordered that this action is dismissed without prejudice based on
18 Plaintiff's failure to file an amended complaint in compliance with this Court's April 29,
19 2021, order.

20 It is further ordered that the Clerk of Court shall enter judgment accordingly.

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22 DATED THIS 9th day of August, 2021.
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E. Jones
UNITED STATES DISTRICT JUDGE

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